MARNI ANYIM

v.

SHALINI SHANMUGAM & ANOR

SESSIONS COURT, KUCHING
RHODZARIAH BUJANG J
[SUMMONS NO: 53-1-2001-I/III]

TORT: *Breach of statutory duty - Failure to provide safe environment for domestic helper - Allegations of physical abuse from first defendant - Whether proved - Whether second defendant had knowledge of physical abuses - Omission to act - Whether caused by extenuating factors - Whether second defendant owed a legal duty to plaintiff - Whether both defendants liable for injuries sustained by plaintiff*

DAMAGES: *Special damages - Backwages - Whether amount due and owed to plaintiff for wages unpaid - Personal injuries - Assessment of damages for injuries sustained - Whether award on exemplary and aggravated damages proper*

The plaintiff, an Indonesian national, entered into the employment of the second defendant (Mr Vijaya) as a domestic helper. The first defendant (Mdm Shalini) was the wife of the second defendant. It was the plaintiff's allegation that in the course of her employment with the defendants until 27 November 2000 when she ran away from their residence, she was subjected to moral degradation, verbal and physical abuse by Mdm Shalini. After she ran away, she had lodged a police report and was brought to the Sarawak General Hospital for medical examination. In this summons and statement of claim, the plaintiff claimed special and general damages for, *inter alia*, pain and suffering and loss of amenities resulting from the injuries inflicted and the scars from the injuries. In addition, there were also aggravated and exemplary damages claimed in the said summons. Against Mr Vijaya her claim was based on a duty of care that he owed her as her legal employer and she alleged that he had failed to discharge that duty by not exercising due and reasonable care for her well being. The defendant's joint defence denied the abuses as alleged and averred that she was treated like their own daughter. Mr Vijaya further denied any knowledge of the abuses she allegedly suffered at the hands of Mdm Shalini and contended that the plaintiff had never complained to him about any assault or beatings by Mdm Shalini.

It was not disputed that Mdm Shalini had been charged with two counts of offences under ss. 326 and 323 of the Penal Code for the injuries sustained by the plaintiff. She had been convicted after a full trial and sentenced. At the time of this civil trial before the court, Mdm Shalini had already been released from prison having served her sentences.

Held:

(1) The sheer improbability of the plaintiff inflicting the injuries herself was too overwhelming. The mark at her back, for instance, was clearly in the shape of an iron. How anyone could have possibly inflicted such injury herself or that such a clear shaped mark was caused by hot water as alleged by the defendant was simply an impossibility in itself. Why she would have wanted to hammer her own head and her finger or punched her own eyes was totally mind boggling. The plaintiff was never proven to be suffering from any mental aberrations or delusions which may have caused her to self inflict such injuries. She had also provided reasons for the abuse such as forgetting to iron the children's clothes, failure to fill in sufficient hot water for the baby's milk and dropping Mr Vijaya's mother's portrait. Though there was little doubt that there were times when she was treated well by the defendants, there was also no doubt that she was also subjected to these physical abuses. She was a domestic helper in that household and her action in running away from the house by climbing through the fence was corroborative of the fact that she had suffered those abuses at the hands of those in her employer's house. Given the violent temperament of Mdm Shalini as her husband herself admitted, the probability that she resorted to physical violence was indeed real. This court was satisfied on a balance of probability that the plaintiff had suffered the abuses that she alleged at the hands of Mdm Shalini. In addition, as plaintiff's counsel had submitted Mdm Shalini's criminal convictions for causing the more serious of the injuries were *prima facie* evidence of her wrongdoing and in both the defendants' testimonies, there was nothing said or proved by them to dislodge that legal proof. The usefulness of the record of appeal in the criminal trial was the material consistencies of the evidence of abuse suffered by the plaintiff. (para 36)

(2) The probability of Mr Vijaya's knowledge as testified by the plaintiff was real as theirs was a small household and the injuries sustained by the plaintiff was not minor. Mr Vijaya was very much aware of his wife's temperament and even if he were powerless to act against her, it did not exonerate him from his culpability because his omission to act was not proven to have been caused by any extenuating factors. There was no clear evidence that he was unable to act in the plaintiff's defence for fear of his own safety and life. Thus, the legal duty to provide her with a safe working environment, which in this case was to be translated as removing her with some urgency from being further abused still remained with him. Consequently, both the defendants were liable for the injuries sustained by the plaintiff in the course of her employment with them. (paras 43 & 44)

(3) The only special damages proven would be the plaintiff's backwages in the sum of RM3,000 which had not been paid to her. It was shown at the trial that the defendant offered her this amount before the trial but was rejected because she was under the impression that it was a global settlement for the claim she had filed herein. There was no reason to penalize her for not accepting that settlement. The amount was due and owing to her being wages unpaid. (para 46)

(4) The most grievous of the plaintiff's injuries were the hot iron attack on her back and the hammer attacks on her finger and head. For this hot iron injury which caused her permanent scarring, the figure of RM30,000 was awarded. That figure was given in consideration of not just the scar that disfigured the plaintiff but the excruciating pain she must have gone through when the wound was inflicted and during the period of its recuperation. (para 47)

(5) For the injuries to her fingers caused by the hammer, this court awarded compensation in the sum of RM8,000 and the bruises and swelling to her head, left eye, lip and other injuries as documented, this court believed a reasonable compensation should be RM10,000. In total therefore the general damages awarded was RM48,000. (para 48)

(6) As for exemplary damages, there was no cogent evidence to prove that the plaintiff had been insulted or humiliated as she claimed by being forced to wear Mdm Shalini's old undergarments because if this was so, the degradation was not connected to the physical abuse. As for aggravated damages, a compensation for hurting the feelings of the plaintiff, there was no evidence of such 'motives' or 'conduct'. The physical abuses were just that – abuses triggered by incidences which angered Mdm Shalini to act in the manner that she did. (paras 49, 50 & 51)

[On special damages, the court awarded interest at 4% p.a from 27 November 2000 until date of judgment and thereafter at 8% p.a until full settlement. Interest on the general damages at 8% p.a from the date of the filing of the summons until full settlement.]

Case(s) referred to:

Choo Michael v. Loh Shak Mow [1994] 1 SLR 584 ***(refd)***

Overseas Tanship (UK) Ltd v. The Miller Steamship Co (The "Wagon Mound") (No 2) [1967] 1 AC 617 ***(refd)***

Rookes v. Barnard [1964] AC 1129 ***(refd)***

For the planitiff - Shankar Ram; M/s. Thomas, Shankar Ram & Co Advocates
For the defendants - Acting on behalf of herself

Reported by Suhainah Wahiduddin

JUDGMENT

Rhodzariah Bujang J:

[1] The plaintiff, Marni binti Anyim ('Marni' for short) was an Indonesian national who hailed from West Kalimantan, Indonesia. On or about June 1998 she entered into the employment of the 2nd defendant, Mr. Vijaya Kumar Govindasamy ('Mr. Vijaya' for short) as a domestic helper. The 1st defendant, Mdm Shalini a/p 'Shanmugam ('Mdm Shalini' for short) was the wife of Mr. Vijaya.

[2] Marni alleged that in the course of her employment with the Kumars until 27 November 2000 when she ran away form their residence, she was subjected to moral degradation, verbal and physical abuse by Mdm Shalini. The abuses, itemized at para. 5 of the statement of claim included being hit by a hammer on her fingers, kicked and stabbed with a screwdriver.

[3] After Marni ran away she lodged a police report and was brought to the Sarawak General Hospital for medical examination where one Dr. Kon Ka Hin attended to her. On 27 December 2000 she was also examined by one Dr. Tok Mang Tze of Chong Clinic on 28 November 2000.

[4] In this summons and statement of claim dated 4 January 2001 she claimed special and general damages for *inter alia*, pain and suffering and loss of amenities resulting from the injuries inflicted and the scars from the injuries. In addition there was also aggravated and exemplary damages claimed in the said summons.

[5] Against Mr. Vijaya her claim was based on a duty of care that he owed her as her legal employer and she alleged that he has failed to discharge that duty by not exercising due and reasonable care for her well being. The particulars of his breach of duty are particularized at para. 6 of the amended statement of claim.

[6] The defendants' joint defence dated 6 February 2002 denied the abuses as alleged and averred that she was treated like the Kumar's own daughter. Mr. Vijaya denied any knowledge of the abuses she allegedly suffered at the hands of Mdm Shalini and contended that Marni never complained to him about any assault or beatings by Mdm Shalini. The defendants also put Marni to strict proof of her allegation of abuses.

The Criminal Trial

[7] It was not disputed that Mdm Shalini was charged with 2 counts of offences under s. 326 and under s. 323 of the Penal Code for the injuries sustained by Marni. She was convicted by the Honourable Sessions Court Judge, Puan Yew Jen Kie after a full trial and sentenced to six months imprisonment and a fine of RM1,000 in default one month imprisonment for the charge under s. 326 and one month imprisonment for the charge under s. 323. She appealed against both convictions and sentences. The High Court allowed her appeal and she was discharged and acquitted of both charges. However upon further appeal to the Court of Appeal, that decision was reversed and the judgment of the Sessions Court was restored. Mdm Shalini then served the full sentence imposed by the Sessions Court. At the time of the civil trial before me, she was already released from prison having served her sentences.

The Civil Trial

[8] In the trial before me, a total of 10 witnesses gave evidence, 2 of whom were court personnels, ie, the Registrar of the Sessions Court who tendered the appeal record for the Sessions Court and the deputy registrar of the High Court who tendered the appeal report for the High Court. The 2 doctors also gave evidence and their medical reports tendered. It was not in dispute and was amply proven that Marni suffered the injuries as stated in their medical reports.

[9] Dr. Kon Ka Hin examined Marni on 27 November 2000 at about 7.30pm at the Accident & Emergency Department of Sarawak General Hospital. His report (exh. P8) revealed the following injuries which I reproduced in full from his report.

i) On her head, a laceration wound with haematoma, 2 additional scalp haematomas, periorbital swelling and haematoma, crack (teeth mark) on both upper and lower lips, abrasion wound on right chin.

ii) On the neck, abrasion wound was noted on both sides.

iii) On the back, a small swelling at T1 area, 2 white patches one on each side probably due to burn (old). Bruises on left lumbar area.

iv) On the upper limbs, there were bruises, abrasion wound, x-ray showed transverse fracture of right 2nd distal phalanx and hairline fracture of proximal middle phalanx.

v) On the lower limbs, there were kelloids (old scar) abrasion wound and bruises.

[10] On the following day ie, 28 November 2000, she was further examined by Dr. Tok Man Tze. Her physical examination of her as narrated in her report (exh. P1) revealed the following injuries which I will quote from her report.

Head and Neck examination revealed:

1) Bruises and swelling on her left side of her scalp and below her left eye.

2) Swelling of the upper lip.

3) Old and fresh scratch marks on the anterior aspect of her neck.

Chest and Abdomen examination revealed:

1) Multiple small superficial wounds on her chest wall and mild bruises over the abdomen wall.

2) Evidence of old injuries seen her back such as scars which was caused by hot iron and sharp object.

Upper Limb examination revealed:

1) Evidence of old scars and some new superficial cuts of her left arm.

2) There were tender swelling over the 2nd and 3rd fingers of the right hand.

3) She also sustained a severe injury to the right index finger which required external fixation.

[11] In the history she gave to both doctors it was consistently stated by her that her injuries as aforesaid were caused by her employer and to Dr. Tok Mang Sze, she specifically said female employer and that the abuse had been going on for the past two years.

[12] Most notable of the injuries were the one to her right index finger and an old scar in the shape of an iron on her back. The imprint of the iron said Dr. Tok could clearly be seen and must have caused her excruciating pain. She also said the scar left by the iron was permanent.

[13] In cross-examination she was however unable to say how old was the iron mark, possibly two years she said.

[14] Mr. Siaw Sui Min @ Tony Liau, a retired member of the police force took photographs of Marni on 27 November 2000 when she reported the incident of abuses to the police. The photographs appeared as exh. P3(a)-(f) in the trial. The negatives were tendered as exh. P3N(a)-(f) and photographs corroborated in some details the report of injuries as detailed by the 2 doctors.

[15] PW8, En Anwar Sulaiman from the Indonesian Consulate who met Marni on 27 November 2000 confirmed the injuries suffered by her her right temple and neck was swollen and bluish, her head was bleeding and her finger was injured.

[16] Marni herself, the 10th witness in the trial testified that she worked with the defendants from 1998-2001. She said she was made to wear Mdm Shalini's old undergarments. As for the iron shaped wound on her back she said Mdm Shalini placed a hot iron there because she forgot to iron her children's clothes. Mr. Vijaya came to know of the injury later but just kept quiet and did not reprimand his wife nor brought her to seek medical attention. The wound took 4-5 months to heal and she suffered much for it.

[17] Before that incident she said she was also beaten and scolded by Mdm Shalini who poked her body with knives, scissors and wire hanger. She claimed that Mr. Vijaya had witnessed the abuses but once when he tried to intervene, Mdm Shalini attacked him and stabbed his lower leg with a knife for which he had to seek medical treatment. She also claimed that the wound inflicted by Mdm Shalini on her stomach took a long time to heal.

[18] As for the incident when her finger was hammered by Mdm Shalini, Marni said Mr. Vijaya witnessed it. He shouted to her that she was a stupid woman and asked her to run and report to the police.

[19] Marni also claimed to have been degraded (being a Muslim) by Mdm Shalini who fed her with left over food and dog food. She was fed little and Mr. Vijaya witnessed her eating the left over food. She also complained about her long working hours which she said started from 4am till 11pm and when there was a party in the house she would have to stay up until 2am but would still have to get up at 4.30am. Mr. Vijaya was privy to this condition she said but chose to ignore it. She was, she said traumatised by the beatings even until the time of the trial. Her evidence at the criminal trial at pp. 35-81 of exh. P9, was referred and confirmed by her which in essence was the same as what she testified before me.

[20] She explained that she did not accept a settlement of RM3,000 from the defendants because that was only for her back wages and not compensation for her injuries.

[21] In cross-examination she admitted that when she first come to the defendants' house she was happy. She said Mdm Shalini was fierce and had punched her on the left side of her eye, and her mouth was also hit with a pellet until her tooth broke. Her head was hit with an iron hammer after she didn't fill in sufficient

hot water for the baby's milk. She disagreed that the injury to her back was caused by hot water being poured down her back and that she inflicted the injury on her neck herself. The injury to her finger was done the same time as that on her head. Then on 27 November 2000 Mdm Shalini's mother in law's photograph fell and that was when Marni said she was dragged by the hair, pushed to the floor and kicked. The previous abuse on 26 November, 2000 and on 27 November, 2000 were witnessed by Mr. Vijaya who did nothing to help her except called her a stupid woman and asked her to report to the police.

[22] She admitted however that she was taken out together with the Kumar's family for visits, was given a necklace with her name on it but that was taken back by Mdm Shalini. She denied any improper conduct alleged by Mdm Shalini such as giving Mr. Vijaya her menstrual blood to drink and alleged that Mdm Shalini falsely accused her of having an affair with Mr. Vijaya.

[23] In cross-examination by Mr. Vijaya she said although she was under the command of Mdm Shalini, Mr. Vijaya also instructed her to work. She vehemently insisted that she told him about the iron incident and he knew about the hammer incident. However she agreed that Mr. Vijaya was a nice man, was generally protective of her and even bought her food when he bought them for his own children.

[24] She agreed that she was taken once to Kuala Lumpur with the family and went to Mines Wonderland and to hotels to celebrate his children's birthday. She admitted being given a bangle during his baby's birthday as a gesture of appreciation.

[25] In re-examination she reiterated that she complained to Mr. Vijaya about the assaults and scoldings by his wife but Mr. Vijaya just kept quiet.

Mdm Shalini's Evidence

[26] She first related how Marni came to work for her after allegations of abuse and improper sexual advances by her former employer and that when Marni worked for them she was treated like her own daughter. Marni was also happy and comfortable with them, she said she was only angry once when Marni dropped her mother in law's photograph but her husband calmed her down and asked Marni to go to her room. She denied inflicting the injuries on Marni as alleged by her.

[27] In cross-examination she alleged that the iron mark could be more than two years old and inflicted before she worked with them or by Marni herself or when she ran from the house.

[28] In re-examination she said if it were proven that she inflicted the injuries on Marni she would pay her as she treated her like her own child.

[29] Mr. Vijaya's evidence was not much different. It was along the same tenor that Marni was treated well like their own daughter, that she was brought along for holidays and for visits during festivals time. He would buy her snacks and Panadol when she complained of headaches. She was in short a trusted maid and was never beaten, assaulted or injured by his wife. Neither did she complain about any ill-treatment from his wife.

[30] In cross-examination by Mr. Ram he disagreed that he was suppressing evidence to protect himself and his wife. He agreed that Marni would not have inflicted the injuries on herself. He also said that if it were true that Marni had been injured by his wife he would willingly pay her compensation. He agreed that on the morning of 27 January 2000 Marni was frightened of Shalini.

[31] When cross-examined by his own wife, Mr. Vijaya denied being stabbed with a knife for protecting Marni. He has nothing extra to add in his re-examination.

[32] The defendants' last witness was a Mr. Yeap Kim Thim. He was a former Director of the Anti Corruption Agency in Kuching and was a friend of the Kumars. He testified as to the good treatment of Marni such as eating at the same table as the family which he witnessed when he dropped by their house but said he had witnessed squabbles between the Kumars about the Marni's poor performance of her duty as a domestic help. He remembered 2 occasions when the maid complained of illness and he went with Mr. Vijaya to buy medication for her but he said Marni never complained of any ill-treatment by the defendants to him. Mdm Shalini did complain to him about her suspicion that Marni gave her menstrual blood for Mr. Vijaya to drink and about her finding 2 bottles of oil in Marni's possession which impliedly were used for the same hocus-pocus thing. Mr. Yeap also mentioned an incident in August/September 2000 when both he and Mdm Shalini pretended to send Marni home just to scare her into bucking up with her work at home but the latter who believed them, begged to be taken back. In cross-examination however he

did confirm that he has left Kuching before the assaults began and did not therefore saw them being done. He did reiterate that both the Kumars squabbled a lot about the maid.

[33] After this witness had given evidence, both defendants closed their case but subsequently Mdm Shalini tried to call 7 other witnesses such as the Senior Federal Counsel, the Director of Immigration, the Inspector General of Police. (see encl. 166) as her witnesses. From this enclosure it was apparent to me from the reasons stated therein that these witnesses were not relevant to the trial. Thereafter I have afterdue consideration maintained the dates which I have fixed earlier for submissions and judgment for this case.

[34] I will now move on to consider the issue of liability but before doing so I wish to dispose of one point which the defendants in particular Mdm Shalini had been harping during the trial. That was with regards to the identity of the plaintiff and this issue she brought up because of the different names used by the plaintiff. In her Indonesian passport (exh. P14) her name was merely stated as Marni. Likewise in her employment contract with Mr. Vijaya (exh. P13). In her police report against Mdm Shalini, her name was stated as Marni bt. Enjim. However in both the medical reports of Dr. Kon and Dr. Tok as well as the criminal charge in the Sessions Court 1 (exh. P7) and in the present summons before me, her name was stated as Marni binti Anyim. Despite the varieties of her name there can be no dispute or confusion as to the identity of the plaintiff; that she was the one and same person who was employed by the Kumars, who suffered the injuries, who ran away from their home, made the police report, seeked shelter at the Indonesian Consulate and finally filed the summons in this court. In short I am absolutely certain, from the evidence of witnesses and identification of the witnesses at the trial that I had the right plaintiff before me.

[35] Now for the question of liability.

Liability

[36] One thing is certain from the evidence adduced the trial as admitted by Marni herself. When most of the injuries were inflicted on her there were no eyewitness. It was mostly her words against that of Mdm Shalini but believed her I must for the sheer improbability of her inflicting the injuries herself is too

overwhelming. The mark at her back for instance. That was clearly in the shape of an iron said Dr. Tok and from the picture shown. How anyone could have possibly inflicted such injury herself or that such a clear shaped mark was caused by hot water as alleged by the defendant is simply an impossibility in itself. Why she would have wanted to hammer her own head and her finger and punched her own eyes again is totally mind boggling. Marni was never proven in the trial before me to be suffering from any mental aberrations or delusions which may caused her to self inflict such injuries. Besides she has provided reasons (though they may seen unjustificate to a reasonable person) for the abuse such as forgetting to iron the chidren's clothes, sufficient hot water for the baby's milk and dropping Mr. Vijaya's mother's portrait. Though the incidences may be small and though I have little doubt that there were times when she was treated well by the defendants (as they and DW5 testified) I do not entertain any doubt that she was also subjected to these physical abuses. She was afterall a domestic helper in that household and her action in running away from the house by climbing through the fence is corroborative of the fact that she suffered those abuses at the hands of those in her employer's house and given the violent temperament of Mdm Shalini as her husband himself admitted, the probability that she resorted to physical violence was indeed real to me. Thus, on the evidence adduced I am satisfied on a balance of probability that Marni had suffered the abuses that she alleged at the hands of Mdm Shalini. In addition, as Marni's counsel has submitted Mdm. Shalini's criminal convictions for causing the more serious of the injuries were *prima facie* evidence of her wrong doing and in both the Kumars' testimonies, there were nothing said or proved by them to dislodge that legal proof.

[37] In arriving at the above finding I am mindful of Mr. Ram's submission of case authorities that Mdm. Shalini's conviction was admissible evidence and *prima facie* proof of her liability. A few cases were cited by him, the persuasive one being the Singapore case of *Choo Michael v. Loh Shak Mow* [1994] 1 SLR 584.

[38] However I felt myself able, even without resorting to the said criminal conviction to decide upon the facts before me on the liability of Mdm. Shalini in this case. The usefulness of the record of appeal in the criminal trial and to me was the material consistencies of the evidence of abuse suffered by Marni.

[39] I will now move on to consider the legal duty of Mr. Vijaya as her employer. A

Legal Duty Of An Employer

[40] It is trite law that an employer has a common law duty to ensure that his employee worked in a safe and conducive working environment. That duty of care has been described in *Halsbury Laws of England*, 3rd edn, at p. 505 as a duty "to take reasonable care the safety of his work-people in all the circumstances of the case so as not to expose them to an unnecessary risk." B C

[41] In the Privy Council's case of *Overseas Tanship (U.K.) Ltd v. The Miller Steamship Co. (The "Wagon Mound") (No. 2)* [1967] 1 AC 617, 642-643 Lord Reid held that in general a person must be regarded as negligent if he does not take steps to eliminate a risk which he knows or ought to know is a real risk and not a mere possibility which would influence the mind of a reasonable man and "that it is justifiable not to take steps to eliminate a real risk if it is small and if the circumstances are such that a reasonable man careful of the safety of his neighbour would think it right to neglect it." D E

[42] In the context of this case and applying the law to the set of facts here the question that begged to be asked was whether Mr. Vijaya was aware of the abuses Marni suttered at the hands of his wife and if he did what steps, if any, he had taken to protect her from such abuses. F

[43] To that first question, and bearing in mind the burden of proof in a civil case ie, on a balance of probability, I would have to answer it in the affirmative. The probability of his knowledge as testified by the plaintiff is to me real as theirs was a small household and the injuries sustained by Marni was not minor, the iron mark and the hammering of the fingers for instance. He claimed to only witnessed his wife shaking Marni the day before she ran away from the house something which I find quite impossible to believe as the testimony of Marni was the hammering was done at the very moment she dropped the picture frame of Mr. Vijaya's late mother and he was home then. He also knew of his wife's temperament and even if he were, for reasons which were not for me to speculate, powerless to act against her, it does not exonerate him from his culpability because his omission to act was not proven to have been caused by any extenuating factors. Marni of course did testify that Mr. Vijaya was injured when trying G H I

to help her during one instance of the physical abuse but it was not admitted by him and I do not have clear evidence that he was therefore unable to act in Marni's defence for fear of his own safety and life. Thus, the legal duty to provide her with a safe working environment, which in this case was to be translated as removing with some urgency from being further abused still remained with him.

[44] Consequently, I find both the defendants liable for the injuries sustained by Marni in the course of her employment with them.

[45] I will next move to the question of assessment of damages.

Special Damages

[46] The only special damages proven would be Marni's back wages in the sum of RM3000 which has not been paid to her. It was shown at the trial that the defendant offered her this amount before the trial but was rejected because she was under the impression that it was a global settlement for the claim she filed herein. I see no reason to penalize her for not accepting that settlement. The important thing is the amount was due and owing to her being wages unpaid. Therefore it should be paid to her and I therefore make an order that the said amount be paid to her.

General Damages

[47] The most grievous of Marni's injuries were the hot iron attack on her back and the hammer attacks on her finger and head. For this hot iron injury which caused the permanent scarring I would award a figure of RM30,000. I gave that figure in consideration of not just the scar that disfigured Marni but the excruciating pain she must have gone through when the wound was inflicted and during the period of its recuperation, as she has testified.

[48] For the injuries to her fingers caused by the hammer, I would award compensation in the sum of RM8,000 and the bruises and swelling to her head, left eye, lip and other injuries as documented by Dr. Tok in exh. P1, I believed a reasonable compensation should be RM10,000. In total therefore the general damages awarded is RM48,000.

[49] Marni also applied for exemplary and aggravated damages. Examplary damages as I understand it, would be awarded if the defendant has behaved in an outrageous or insulting manner when committing the wrong. I do not have cogent evidence to prove that Marni had been insulted or humiliated as she claimed by being forced to use Mdm. Shalini's old undergarments because even if this was so, the degradation was not connected to the physical abuse.

[50] As for aggravated damages it is compensation for hurting the feelings of the plaintiff. In the House of Lord's case of *Rookes v. Barnard* [1964] AC 1129 it was held that in assessing compensation the court can take into account "the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride".

[51] In the context of this case I see no evidence of such 'motives' or ''conduct'. The physical abuses were just that – abuses triggered by incidences which angered Mdm. Shalini to act in the manner that she did. Therefore the damages which I ordered earlier was sufficient in my view to compensate the plaintiff in this case.

Interest

[52] On the special damages I award that interest at 4% p.a. from 27 November 2000 until date of judgment and thereafter at 8% p.a. until full settlement.

[53] Interest on the general damages is at 8% p.a. from the date of the filing of the summons until full settlement.

Costs

[54] As for costs, Mr. Shankar Ram asked that cost not be awarded as he was doing this case *pro bono*. That was most salutary of him and I therefore make no order of costs in this case.